IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 10702 of 1999

Between:

Yammanur Bhairaveswaraiah, s/o. Appaiah,

Trust Board Chairman, Sri Kasivisweswara Swamy Temple,

Dadireddipalli Village, Kamalapuram Mandal, Kadapa Dist.

..... PETITIONER

AND

1. The District Collector, Kadapa.

2. The Revenue Divisional Officer/

Land Acquisition Officer, Kadapa.

3. The Mandal Revenue Officer, Kamalapuram, Kadapa.

4. The Commissioner of Endowments, A.P., Hyderabad.

5. The Assistant Commissioner of Endowments, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly writ of mandamus directing the respondents not to take any further action pursuant to draft notification and draft declaration published in Kadapa District Gazette dated 21-12-1995 and 23-12-1995 respectively by holding the said land acquisition proceedings pertaining to Ac.1-91 cents of land in S.No.522 of Yellareddipalli village, Kamalapuram Mandal, Kadapa District, as null and void.

Counsel for the Petitioner : MR.G.RAMACHANDRA REDDY

Counsel for the Respondents : GP FOR LAND ACQUISITION

The Court made the following :

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ORDER :

Sri Kasivisweswaraiah Swamy Temple, Dadireddipalli Village, Kamalapuram Mandal of Kadapa District, owns an extent of Acs.4-00 in Survey Nos.521, 522 and 523 at Yellareddygaripalli Village. The District Collector, Kadapa, issued a notification under Section 4(1) of the Land Acquisition Act, 1894 (for brevity 'the Act') on 6-12-1995 proposing to acquire an extent of Acs.1-91 in Survey No.522 for public purpose, namely for the provision of house sites. Invoking the provisions of Section 17(4) of the Act, the District Collector directed that the provisions of Section 5-A of the Act did not apply to the lands under acquisition. The land acquisition notification published in the Gazette
dated 21-12-1995 is assailed in this writ petition.

A counter affidavit is filed on behalf of respondents 1 to 3 stating that after issue of notification, eighty percent of the compensation as per the Provisional Value Statement approved by the Joint Collector was paid to the Assistant Commissioner of Endowments and possession of the land was taken on 3-1-1999. It is also stated that as possession was already taken, it is not possible to eliminate the land from acquisition as the Backward Class families are in dire need of house sites in the village. It is also urged that there is no other suitable Government land available in the village to provide house sites, and therefore, it is inevitable to acquire the temple lands and that there will be no harm to the cultivable lands in the village.

Learned counsel for the petitioner Sri G.Ramachandra Reddy submits that the respondents failed to take possession of the land within three months, and therefore,

the possession taken on 3-1-1999 is not legal. He further submits that as the award is not passed even as on today, the proceedings initiated under the Act must be declared to have lapsed. Lastly, he would urge that the procedure contemplated under G.O.Ms.No.456, Revenue (EWBT-II) Department, dated 29-9-1995 has not been followed and the matter was not referred to the Committee.

The fact that the respondents have taken possession of the land, duly paying eighty percent of the compensation, is not seriously disputed or denied. In such a case, Section 11-A of the Act which requires the Land Acquisition Officer to pass orders within two years from the date of publication of declaration has no application as held by the Supreme Court in **Awadh Bihari Yadav v. State of Bihar.** In a case of this nature, even if the possession is not taken within three months as contemplated under sub-section (5) of Section 17 of the Act, as amended by the Andhra Pradesh Legislature, the same does not make any difference. Further, in the considered opinion of this Court, when eighty percent of the compensation is paid by the Land Acquisition Officer before taking possession, the challenge to the notification under Section 4(1) of the Act must not be entertained. The orders of the Government passed in G.O.Ms.No.456, dated 29-9-1995 are only executive instructions and that they will not override the provisions of the Act, and therefore, even if the matter is not referred to the Committee, the same does not vitiate the land acquisition proceedings. Further, out of Acs.4-00 of land in possession of the temple, only Acs.1-91 has been acquired, and therefore, no serious prejudice would be caused to the petitioner temple.

The writ petition is devoid of merits and is accordingly dismissed. No costs.

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(V.V.S.RAO, J.)

Dt.16-08-2004.

Msr.

AIR 1996 SUPREME Court 122

Sd/-MOHD.MAHMOOD ALI

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The District Collector, Kadapa.

2. The Revenue Divisional Officer/

Land Acquisition Officer, Kadapa.

3. The Mandal Revenue Officer, Kamalapuram, Kadapa.

4. The Commissioner of Endowments, A.P., Hyderabad.

5. The Assistant Commissioner of Endowments, Hyderabad.

6. 2CCs to Government Pleader for Land Acquisition,

High Court of A.P., Hyderabad.(OUT)

7. 2CD copies

8. One CC to Mr.Grama Chandra Reddy, Advocate.

GPK

HIGH COURT

DT. 16-8-2004

ORDER

WP: 10702 / 1999

Dismissing the WP

without costs.

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.10702 of 1999

Dt.16-08-2004.

(Msr)